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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,073	09/08/2003	Donald J. Stavely	200310790-1	1422

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FORT COLLINS, CO 80527-2400

EXAMINER

SUTHAR, RISHI S

ART UNIT	PAPER NUMBER
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2851

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/658,073

Applicant(s)

STAVELY ET AL.

Examiner

Rishi Suthar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-22 and 24-35 is/are rejected.
- 7) ☒ Claim(s) 5 and 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20030908</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6-12, 19-22, 24-27 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Yanagisawa (US 5,223,875).

Yanagisawa teaches in Figs. 3, 4 and 7 a photography system, comprising: a) a remote control (4); and b) a digital camera (1) having a field of view (field of view encompasses the entire area camera 1 can see through its movable range), which digital camera can detect in its field of view the position of the remote control, and which digital camera selects a region from its field of view (selects a specific position to move the camera) to photograph based on the detected position of the remote control; wherein the digital camera centers the selected region on the detected position of the remote control (Fig. 7); wherein the selected region is of a predetermined size, and wherein the digital camera positions the selected region as nearly as possible to centered on the detected position of the remote control while keeping the selected

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region within the camera's field of view (Fig. 7); wherein digital camera: a) selects the largest region (entire frame size of camera) that will fit within its field of view when the selected region is centered on the detected position of the remote control, and b) centers the selected region on the detected position of the remote control; wherein the remote control further comprises a light source (43), and the digital camera detects the position of the remote control by detecting the light source; wherein the light source emits light intermittently (see Fig. 6); wherein the digital camera detects the position of the remote control by detecting a change in state of the light source between successive digital images (detection of pulses, see Figs. 5 and 6); wherein the light source emits no light during the taking of a final photograph; wherein the light source is used to signal the digital camera to perform at least one other function in addition to selecting a region to photograph; wherein the light source is used to signal the digital camera to take a final photograph (button B4); and wherein the digital camera preferentially focuses on subjects in the vicinity of the remote control.

3. Claims 1, 13, 14, 19, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohodar (US 5,012,335).

Cohodar teaches in Figs. 1 and 2 a photography system, comprising: a) a remote control (48); and b) a digital camera (12) having a field of view (field of view encompasses the entire area camera 12 can see through its movable range), which digital camera can detect in its field of view the position of the remote control, and which digital camera selects a region from its field of view (selects a specific position to move

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the camera) to photograph based on the detected position of the remote control; wherein the digital camera is capable of making video recordings; wherein the digital camera re-selects the region to photograph as the remote control moves during recording.

4. Claims 1, 13, 15-19, 28-30, 34 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Allen et al. (US 2003/0169339).

Allen et al. teaches in Figs. 1, 2 and 5 a photography system, comprising: a) a remote control (see paragraph [0129]); and b) a digital camera having a field of view, which digital camera can detect in its field of view the position of the remote control, and which digital camera selects a region from its field of view to photograph based on the detected position of the remote control; wherein the digital camera is capable of making video recordings; wherein the remote control further comprises a light source that emits light intermittently, and wherein the digital camera removes the effect of the light source from video frames in which the emitting light source appears; wherein the effect of the light source is removed using pixel information from other video frames in which the emitting light source does not appear; wherein the selected region is of a predetermined size, and wherein the digital camera positions the selected region as nearly as possible to centered on the position of the remote control, while keeping the region within the camera's field of view; wherein the digital camera comprises an optical zoom function, and wherein the digital camera improves a resolution of the selected region using the optical zoom function (see Fig. 4 in particular); further comprising: a) emitting light

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intermittently from the remote control; b) making a video recording; and c) removing the effect of the light from a video frame in which the light appears; and, a photography system, comprising: a) means for detecting, in a field of view of a digital camera, the position of a remote control; and b) means for digitally framing a photograph based on the detected position of the remote control (see Figs. 2, 3 and 4).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 6-12 and 24-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7-12, 23, 30 and 31 of copending Application No. 10/645,236. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 7-12,

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23, 30 and 31 of copending application 10/645,236 fall entirely within the scope of claims 6-112 and 24-26 of the current application. For example, claim 6 the current application includes all the structural limitations of claim 1 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

7. Claims 5 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: The primary reasons for indication allowable subject matter are the limitations found in claims 5 and 23 where the digital camera selects a region that is of the predetermined minimum size and positions the region as nearly as possible to centered on the detect position of the remote control in combination with the other claimed elements.

Telephone Numbers

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rishi Suthar whose telephone number is 571-272-8456. The examiner can normally be reached on M-F 8:30am to 6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diane Lee can be reached on 571-272-2399. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Rishi Suthar
Examiner
Art Unit 2851

RS
March 26, 2007

William Perkey
Primary Examiner